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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ANDREA ZAMBRANO,

14 Defendant.
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Case No. 2:13-cr-00437-LDG (VCF)

ORDER

16 Defendant Andrea Zambrano moves to vacate, set aside, or correct criminal
17 sentence pursuant to 28 U.S.C. §2255 (ECF ## 73,75)¹, which the government opposes
18 (ECF #79). The Court will deny the motion.

19 Zambrano also moves, *pro se*, to stay interest and defer payments because her
20 obligation to pay restitution is joint and several (ECF #95), and has submitted a hand-
21 written letter that both (a) asks the Court to modify her obligation to pay restitution, so that
22 she has individual obligation to pay only half of the restitution owed to the victim, rather
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25 ¹ Zambrano also moves to stay consideration of her motion (ECF #89) and to
26 reconsider her sentence (ECF #92). The latter motion is merely repetitive of her pending
§2255 motion.

1 than a joint and several obligation with co-defendant Anthony Carter to pay the entire
2 amount of the restitution, and asks the Court to grant her credit for time served (ECF #96).

3 Zambrano pled guilty to carjacking in violation of 18 U.S.C. §2119 and to using a
4 firearm during and in relation to a crime of violence in violation of 18 U.S.C. §924(c). She
5 argues that carjacking neither (a) qualifies as a crime of violence (a) under §924(c)'s
6 physical force clause because carjacking can be committed by "intimidation," nor (b)
7 qualifies pursuant to Section 924(c)'s residual clause, as that clause should be found to be
8 unconstitutional pursuant to the Supreme Court's reasoning in *Johnson v. United States*,
9 135 S.Ct. 2551 (2015).

10 Two bars exist that preclude Zambrano from obtaining relief on her motion. In
11 *Johnson*, the Supreme Court held that the residual clause of the Armed Career Criminal
12 Act, 18 U.S.C. § 924(e)(1), (2)(B)(ii), was unconstitutionally vague. Zambrano filed the
13 instant motion arguing that *Johnson* is equally applicable to §924(c) cases and that her
14 instant motion is timely as it was filed within one year of *Johnson*. The Ninth Circuit,
15 however, has held to the contrary, finding that "[t]he Supreme Court has not recognized
16 that § 924(c)'s residual clause is void for vagueness in violation of the Fifth Amendment."
17 *United States v. Blackstone*, 903 F.3d 1020, 1028 (9th Cir. 2018). As indicated by the Ninth
18 Circuit, "[t]he Supreme Court may hold in the future that *Johnson* extends to sentences
19 imposed . . . pursuant to 18 U.S.C. § 924(c), but until then [defendant's] motion is
20 untimely." *Id.*

21 Zambrano moves to stay consideration of her §2255 motion until the Ninth Circuit
22 issues "the mandate in *Blackstone* or until the United States Supreme Court resolves
23 certiorari of *Blackstone*, whichever is later." As the Ninth Circuit has issued its decision in
24 *Blackstone*, however, this Court is bound to follow that decision. *Yong v. I.N.S.*, 208 F.3d
25 1116, 1119 n.2 (9th Cir. 2000).

1 Further, even if the Supreme Court issues certiorari and reverses *Blackstone*,
2 permitting Zambrano's motion to be considered on its merits, her motions nevertheless will
3 fail as the Ninth Circuit has rejected the specific argument raised by Zambrano: that
4 carjacking is not a crime of violence under the §924(c)'s physical force clause because it
5 can be committed by intimidation.

6 To be guilty of carjacking "by intimidation," the defendant must take a motor
7 vehicle through conduct that would put an ordinary, reasonable person in fear
8 of bodily harm, which necessarily entails the threatened use of violent
9 physical force. It is particularly clear that "intimidation" in the federal
10 carjacking statute requires a contemporaneous threat to use force that
11 satisfies *Johnson [v. United States, 559 U.S. 133, 140, 130 S.Ct. 1265, 176*
12 *L.Ed.2d 1 (2010)]* because the statute requires that the defendant act with
13 "the intent to cause death or serious bodily harm." 18 U.S.C. § 2119."

14 *United States v. Gutierrez*, 876 F.3d 1254, 1257 (9th Cir. 2017).

15 The Court will also deny Zambrano's *pro se* motions, both because the Court lacks
16 authority to provide the relief requested and because the Court intended, and did not err, in
17 determining that Zambrano be jointly and severally liable with her co-defendant for the
18 restitution they owe to the victim of their criminal conduct.

19 Certificate of Appealability

20 To appeal this order, Zambrano must receive a certificate of appealability from a
21 circuit or district judge. 28 U.S.C. §2253(c)(1)(B); Fed. R. App. P. 22(b)(1); 9th Cir. R. 22-
22 1(a). To obtain that certificate, Zambrano "must make a substantial showing of the denial
23 of a constitutional right, a demonstration that . . . includes showing that reasonable jurists
24 could debate whether (or, for that matter, agree that) the petition should have been
25 resolved in a different manner or that the issues presented were adequate to deserve
26 encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000)
(quotation omitted). Though the Supreme Court has not yet decided whether to issue
certiorari in *Blackstone*, reasonable jurists cannot debate that the Ninth Circuit has squarely
rejected Zambrano's argument that carjacking is a not a crime of violence under §924(c)'s

1 physical force clause. Accordingly, the Court will decline to issue a certificate of
2 appealability.

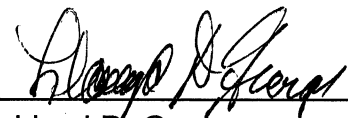
3 Therefore, for good cause shown,

4 THE COURT **ORDERS** that Defendant's Motion to Stay (ECF #89) is DENIED;

5 THE COURT FURTHER **ORDERS** that Defendant's Abridged Motion and Motion to
6 Vacate, Set Aside, or Correct Sentence under 28 U.S.C. §2255 (ECF ## 73, 75) and her
7 *pro se* Motion for Reconsideration raising the same argument and seeking the same relief
8 (ECF #92) are DENIED;

9 THE COURT FURTHER **ORDERS** that Defendant's *pro se* Motion to Stay Interest
10 and Defer Payments (ECF #95), and Letter requesting Credit for Time Served and to Sever
11 Defendant's Joint and Several liability for restitution (ECF #96) are DENIED.

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13 DATED this 21 day of June, 2019.



Lloyd D. George
United States District Judge